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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,788	11/04/2003	Scot N. Andersen	15824.I.I	7430
22913	7590	07/26/2004	EXAMINER	
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			WILSON, JOHN J	
			ART UNIT	PAPER NUMBER
			3732	
DATE MAILED: 07/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/701,788	ANDERSEN, SCOT N.	
	Examiner	Art Unit	
	John J. Wilson	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-33 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 November 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/3/04, 6/28/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 3, "the dental bleaching composition" lacks proper antecedent basis within the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 6, 10-17, 20-23, 27-30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (6036943) in view of Weitzman (4138814). Fischer shows a pre-shaped tray formed from thermoplastic material having front, rear and bottom walls defining a through as shown in Fig. 3, the walls have a thickness range of .5 mm to 3 mm, column 11, line 2, and the walls are thin and flexible with a quantity of sticky treatment composition that helps hold the tray to a person's teeth, see Abstract. Fischer does not show a "non-custom" tray. It is noted that the terminology, "non-custom" tray broadly refers to the process of forming the tray. In article claims, the

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process of forming the final structure is not given patentable weight, however, Weitzman does show a flexible forming tray that is a non-custom tray. It would be obvious to one of ordinary skill in the art to modify Fischer to include an art known way of making and using trays as shown by Weitzman in order to a known thin tray technology to other known trays and methods of use. Fischer shows a range that includes a thickness that is less than 1mm. The specific range of thickness used is an obvious matter of choice in a known parameter to the skilled artisan. As to claim 5, see Fig. 6 of Fischer. As to claim 6, as shown in Fig. 6, Fischer teaches applying to the upper jaw. It is well known in the art to apply treatments to both jaws, and therefore, it would be obvious to the skilled artisan to us a tray for the lower jaw. As to claim 11, Fischer shows a range of thickness down to .5 mm, however, does not show using a thickness less than .5 mm. The specific thickness range used is held to be an obvious matter of choice in a non-critical size, the size being non-critical because the present disclosure teaches that the range of thickness can be more than that now claimed. As to claim 13, see Fig. 4 of Fischer which shows a tray that terminates near the gingival line. As to claim 14, see the agents disclosed in the Abstract of Fischer. As to claim 15, see bleaching agent disclosed in the Abstract of Fischer. As to claim 16, see the thickening agent taught by Fischer, column 6, line 63.

Claims 3, 4, 7-9 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (6036943) in view of Weitzman (4138814) as applied to claim 1 above, and further in view of Burgio (6126443). The above combination does not

show indentations for the treatment agents. Burgio teaches using indentations 32. It would be obvious to one of ordinary skill in the art to modify the above combination to include indentations as shown by Burgio in order to better hold the treatment agents. As to claim 4, the indentations 32 of Burgio are held to be dimples. As to claim 7, the above combination does not show use of the materials EVA and polypropylene. Burgio teaches that it is known to use EVA and polypropylene for trays, column 6, lines 34-38. It would be obvious to one of ordinary skill in the art to modify the above combination to include the use of the materials as shown by Burgio in order to make use of art known materials for forming trays.

Claims 18 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (6036943) in view of Weitzman (4138814) as applied to claim 1 above, and further in view of McLaughlin (6274122). The above combination does not show using a dry treatment agent. McLaughlin shows the use of a dry treatment agent 20, column 8, lines 44-55. It would be obvious to one of ordinary skill in the art to modify the above combination to include the use of a dry treatment agent as shown by McLaughlin in order to better ship and control the agent.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (6036943) in view of Weitzman (4138814) as applied to claim 1 above, and further in view of Fontenot et al (5863202). The above combination does not show the use of a sealed package. Fontenot teaches using a sealed package 14, Fig. 7, column 9, lines

9-17. It would be obvious to one of ordinary skill in the art to modify the above combination to include a sealed package as shown by Fontenot in order to ship the device while preserving the treatment composition.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (6036943) in view of Weitzman (4138814) as applied to claim 30 above, and further in view of Baker et al (5863319). While Fischer teaches using a sticky agent, the above combination does not show the use of the tackifying agent polyvinyl pyrrolidone. Baker teaching using polyvinyl pyrrolidone as a tackifying agent, column 3, lines 13-35, specifically line 26. It would be obvious to one of ordinary skill in the art to modify the above combination to include the use of the agent shown by Baker as an equivalent substitute for the agent taught by Fischer.

Drawings

The drawings filed November 4, 2003 have been found to be acceptable by the examiner.

Inventorship

In view of the papers filed February 11, 2004, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been

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corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by adding Peter M. Allred as joint inventor.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bestenheider et al (20030003421) shows a thin mouthpiece 1. Sagel et al (6096328) shows a non-custom tray 24.

Any inquiry concerning this communication should be directed to John Wilson at telephone number (703) 308-2699.



John J. Wilson
Primary Examiner
Art Unit 3732

jjw

July 23, 2004

Fax (703) 872-9306

Work Schedule: Monday through Friday, Flex Time